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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

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6 DAVID HOWELL,

7 Plaintiff,

8 v.

9 BLAIN BEARD *et al.*,

10 Defendants.

Case No. 3:19-cv-00202-MMD-WGC

THREE STRIKES ORDER

11  
12 On April 18, 2019, *pro se* Plaintiff David Howell submitted a civil rights complaint  
13 “(Complaint)” pursuant to 42 U.S.C. § 1983 and an application to proceed *in forma*  
14 *pauperis*. (ECF Nos. 1, 1-1.) However, on at least three prior occasions, this Court and  
15 the Ninth Circuit have dismissed civil actions and appeals commenced by Plaintiff while in  
16 detention as frivolous or for failure to state a claim upon which any relief may be granted.<sup>1</sup>

17 Pursuant to 28 U.S.C. § 1915(g), “if [a] prisoner has, on 3 or more prior occasions,  
18 while incarcerated or detained in any facility, brought an action or appeal in a court of the  
19 United States that was dismissed on the grounds that it is frivolous, malicious, or fails to  
20 state a claim upon which relief may be granted,” he may not proceed *in forma pauperis*  
21 and, instead, must pay the full \$400.00 filing fee in advance unless he is “under imminent  
22 danger of serious physical injury.” 28 U.S.C. § 1915(g).

23 In his Complaint, Plaintiff appears to allege claims for spoliation of evidence taking  
24 place in a different civil case. (See *generally* ECF No. 1-1.) The Court finds that these  
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27 <sup>1</sup>See *Howell v. Balaam*, 3:04-cv-00070-HDM-VPC (dismissed for failure to state a  
28 claim on May 17, 2004) and *Howell v. Pusich*, 3:17-cv-00736-MMD-WGC (district court  
dismissed for failure to state a claim on March 2, 2018, and appellate court dismissed as  
frivolous on August 23, 2018). The Court takes judicial notice of its prior records in the  
above matters.

1 allegations fail to plausibly allege that Plaintiff is in imminent danger of serious physical  
2 injury. See *Andrews v. Cervantes*, 493 F.3d 1047, 1055–56 (9th Cir. 2007) (holding that  
3 the exception to § 1915(g) applies if the complaint makes a plausible allegation that the  
4 prisoner faced an ongoing danger of serious physical injury at the time of filing). As such,  
5 Plaintiff must pre-pay the \$400.00 filing fee in full.


6 For the foregoing reasons, it is ordered that Plaintiff's application to proceed *in*  
7 *forma pauperis* (ECF No. 1) is denied.

8 It is further ordered that this action will be dismissed without prejudice unless  
9 Plaintiff pays the \$400.00 filing fee in full within 30 days of entry of this order.

10 It is further ordered that the Clerk of the Court will send Plaintiff two copies of this  
11 order. Plaintiff will make the necessary arrangements to have one copy of this order  
12 attached to the check paying the filing fee.

13 It is further ordered that the Clerk of the Court will retain the Complaint (ECF No. 1-  
14 1) but will not file it at this time.

15 DATED THIS 27<sup>th</sup> day of February 2020.

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19 MIRANDA M. DU  
20 CHIEF UNITED STATES DISTRICT JUDGE  
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